

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petitions for Waiver of Universal Service High-Cost Filing Deadlines)	WC Docket No. 08-71
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Nebraska Technology & Telecommunications, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a))	
)	
Dixie-Net Communications, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. 54.802(a))	
)	
The Community Cable Television Agency of O'Brien County d/b/a The Community Agency and TCA Petition for Waiver of the Commission's Universal Service Rules)	
)	
H&B Cable Service, Inc. Petition for Waiver of Section 54.809 of the Commission's Rules)	
)	
FiberNet, LLC Petition for Waiver of FCC Rule Section 54.307(c)(4))	
)	
Skylink L.C. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules)	

ORDER

Adopted: April 29, 2010

Released: April 29, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny six requests, filed by: (1) Nebraska Technology & Telecommunications, Inc. (NTT); (2) Dixie-Net Communications, Inc. (Dixie-Net); (3) The Community Cable Television Agency of O'Brien County d/b/a The Community Agency and TCA (TCA); (4) H&B Cable Service, Inc. (H&B); (5) FiberNet, LLC (FiberNet); and (6) Skylink L.C. (Skylink) (collectively, the petitioners), for waivers of various high-cost universal service support filing deadlines set forth in

sections 54.307(c), 54.802(a) and 54.809(c) of the Commission's rules.¹ For the reasons discussed below, we find that the petitioners have failed to demonstrate that good cause warrants waiver of the Commission's rules.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support."² Support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."³ To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.⁴ Each of the petitioners requests waiver of one or more of the requirements described below.

3. Section 54.307(c) of the Commission's rules provides that a competitive ETC must file working line count data with the Universal Service Administrative Company (USAC) on a quarterly basis to receive high-cost universal service support, other than Interstate Access Support (IAS).⁵ Mandatory line count data are due on March 30, July 31, September 30, and December 30 of each year.⁶ USAC uses line count data filed in March to calculate third quarter support for the current calendar year, line count data filed in July to calculate fourth quarter support for the current calendar year, line count data filed in September to calculate first quarter support for the following calendar year, and line count data filed in December to calculate second quarter support for the following calendar year.

4. To receive IAS, an ETC that is providing service within an area served by a price cap local exchange carrier must file certain line count data with USAC on a quarterly basis pursuant to section 54.802(a) of the Commission's rules.⁷ Specifically, an ETC must submit line count data showing separately the number of residential/single-line business lines, and multi-line business lines within its

¹ Letter from Gwen Sullivan, Nebraska Technology & Telecommunications, Inc., to Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 16, 2006) (NTT Petition); Letter from Jerry Windham, President, Dixie-Net Communications, Inc., to Federal Communications Commission, CC Docket No. 96-45 (filed Sept. 10, 2007) (Dixie-Net Petition); The Community Cable Television Agency of O'Brien County d/b/a The Community Agency and TCA Petition for Waiver of the Commission's Universal Service Rules, CC Docket No. 96-45 (filed Oct. 10, 2007) (TCA Petition); H&B Cable Service, Inc. Petition for Waiver of Section 54.809 of the Commission's Rules, WC Docket No. 08-71 (filed July 1, 2008) (H&B Petition); FiberNet, LLC Petition for Waiver of FCC Rule Section 54.307(c)(4), WC Docket No. 08-71 (filed Oct. 10, 2008) (FiberNet Petition); Skylink L.C. Petition for Waiver of Sections 54.607(c) and 54.802(a) of the Commission's Rules, WC Docket No. 08-71 (filed Aug. 10, 2009) (Skylink Petition); 47 C.F.R. §§ 54.307(c), 54.802(a), 54.809(c).

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ *See, e.g.*, 47 C.F.R. §§ 54.307 (competitive ETC line count filing requirements), 54.313 (certification requirements regarding use of high-cost universal service support by non-rural carriers), 54.314 (certification requirements regarding the use of high-cost universal service support by rural carriers), 54.802(a) (ETC line count filing requirements for Interstate Access Support (IAS)), 54.809 (certification requirements regarding the use of IAS), 54.903 (data filing requirements for Interstate Common Line Support (ICLS)), 54.904 (certification requirements regarding the use of ICLS).

⁵ *See* 47 C.F.R. § 54.307(c).

⁶ *Id.*

⁷ 47 C.F.R. § 54.802(a).

study area on a quarterly basis.⁸ Mandatory line count data are due on the last business day of March, June, September, and December of each year.⁹ USAC uses line count data filed in March to calculate second quarter support for the current calendar year, line count data filed in June to calculate third quarter support for the current calendar year, line count data filed in September to calculate fourth quarter support for the current calendar year, and line count data filed in December to calculate first quarter support for the following calendar year.

5. In addition, an ETC must file a certification pursuant to section 54.809(a) of the Commission's rules, stating that all IAS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁰ Section 54.809(c) requires that this certification be filed with USAC and the Commission on the date that the ETC first files its line count data, and thereafter on June 30 of each year.¹¹

6. *NTT's Petition for Waiver.* On February 16, 2006, NTT requested a waiver of the June 30, 2004 line count filing deadline established by section 54.802(a) of the Commission's rules to receive IAS.¹² NTT did not submit the required data to USAC until August 2, 2004, more than four weeks after the deadline.¹³ NTT states it missed the deadline because it had limited knowledge of the filing procedures, and that it confused the filing deadline for IAS with the filing deadlines for other types of high-cost universal service support.¹⁴

7. *Dixie-Net's Petition for Waiver.* On September 10, 2007, Dixie-Net requested a waiver of the June 28, 2007 line count filing deadline established by section 54.802(a) of the Commission's rules to receive IAS.¹⁵ Dixie-Net did not submit the required data to USAC until July 26, 2007, four weeks after the deadline. Dixie-Net indicates that it confused the filing deadline for IAS with the filing deadlines for other types of high-cost universal service support.¹⁶ Dixie-Net argues that it is a small company in north Mississippi and it will be financially impaired if this waiver is not granted.¹⁷ Dixie-Net states that it now understands the difference between IAS filing dates and the filing dates for other types of high-cost universal service support, and will make future filings accordingly.¹⁸

8. *TCA's Petition for Waiver.* On October 10, 2007, TCA requested a waiver of the December 29, 2006 line count filing deadline established by section 54.802(a) of the Commission's rules to receive IAS, and the December 30, 2006 line count filing deadline established by section 54.307(c)(3) of the Commission's rules to receive ICLS, high-cost loop support (HCLS), high-cost model support (HCMS),

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.809(a).

¹¹ 47 C.F.R. § 54.809(c). In the *ETC Designation Order*, the Commission adopted a quarterly IAS certification schedule to accommodate late filings, whereby a late-filing carrier's IAS support is curtailed by a quarter's worth of support for each quarter that the certification is untimely. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6413-14, 6421, para. 94 (2005) (*ETC Designation Order*).

¹² NTT Petition at 1; 47 C.F.R. § 54.802(a).

¹³ NTT Petition at 2.

¹⁴ *Id.* at 1-2.

¹⁵ Dixie-Net Petition at 1; 47 C.F.R. § 54.802(a).

¹⁶ Dixie-Net Petition at 1.

¹⁷ *Id.*

¹⁸ *Id.*

and local switching support (LSS).¹⁹ TCA indicates that it did not submit the required data to USAC because, throughout the month of December, the employee responsible for submitting the line count data was involved in extraordinary activities before the Iowa Utilities Board concerning telephone company matters.²⁰ TCA has not submitted the required data, but indicates that it stands ready to provide the data should the Commission grant its requested waiver.²¹ TCA states that it has since implemented internal and external safeguards to assure future line count filings are submitted on a timely basis.²²

9. *H&B's Petition for Waiver.* On July 1, 2008, H&B requested a waiver of the June 30, 2006 certification deadline established by section 54.809(c) of the Commission's rules to receive IAS.²³ H&B indicates that it hired a third-party vendor to prepare quarterly line counts and annual certifications, and, due to an administrative oversight, the vendor never filed the June 30, 2006 annual IAS certification with USAC or the Commission. As a result, H&B did not receive IAS during the period of July 2006 through June 2007.²⁴ H&B argues that it had hired an experienced third-party vendor to handle its filings, and it would be inequitable to deny H&B's universal service support due to the failure of such third party vendor to file an annual IAS carrier certification.²⁵ H&B states that the third party vendor has taken appropriate steps to assure that certifications will be timely filed in the future.²⁶ H&B asserts that the Commission has granted waiver requests of other high-cost filing deadlines under similar circumstances.²⁷ H&B also asserts that denying it IAS because the carrier failed to file the June 30, 2006 annual certification would undermine the Commission's goal of competitive neutrality.²⁸

10. *FiberNet's Petition for Waiver.* On October 10, 2008, FiberNet requested a waiver of the June 30, 2008 line count filing deadline established by section 54.802(a) of the Commission's rules to receive IAS.²⁹ FiberNet states that the employee charged with the responsibility of submitting FiberNet's

¹⁹ TCA Petition at 1; 47 C.F.R. §§ 54.307(c)(3), 54.802(a).

²⁰ TCA Petition at 2. TCA indicates that the employee responsible for submitting the line count data was called away to Des Moines in December of 2006 for other pressing telephone company business before the Iowa Utilities Board. *Id.* TCA further states that throughout the month of December 2006, the same individual was heavily involved in extraordinary activities before the Iowa Utilities Board concerning telephone company matters. *Id.*

²¹ *Id.*

²² *Id.*

²³ H&B Petition at 1; 47 C.F.R. § 54.809(c).

²⁴ H&B Petition at 1.

²⁵ *Id.* at 1, 5-6.

²⁶ *Id.* at 6.

²⁷ *Id.* at 4-5 (citing *Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580 (Wireline Comp. Bur. 2004) (*Grande Order*); *United States Cellular Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 12418 (Wireline Comp. Bur. 2004) (*US Cellular Order*); *Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5-Kidder Limited Partnership; and Bismarck MSA Limited Partnership Petition for Waiver of Section 54.307 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9179 (Wireline Comp. Bur. 2006) (*Northwest Dakota Order*)). As discussed below, these orders do not provide support for the requested waivers. See *infra* para. 12 and note 42.

²⁸ H&B Petition at 3 (citing *Grande Order*, 19 FCC Rcd at 15583).

²⁹ FiberNet Petition at 1-2. FiberNet requests waiver of section 54.307(c)(4) of the Commission's rules. *Id.* However, that section concerns line count filing deadlines for competitive ETCs for high-cost universal service support (other than IAS). 47 C.F.R. § 54.307(c)(4). Section 54.802(a) is the rule section that sets forth the line (continued. . .)

loop count information resigned, and the new employee assuming this responsibility confused the filing deadline for IAS with the filing deadlines for other high-cost support mechanisms.³⁰ FiberNet did not submit the required data to USAC until July 30, 2008, four weeks after the deadline.³¹ FiberNet argues that it is a small, regional competitive local exchange carrier, and the loss of IAS support for the period in question could impair its ability to expand its telecommunications services.³²

11. *Skylink's Petition for Waiver*. On August 10, 2009, Skylink requested a waiver of the December 30, 2008 line count filing deadline established by sections 54.307(c) and 54.802(a) of the Commission's rules to receive HCLS and IAS.³³ Skylink states that it missed the deadline because it was undergoing an end of year audit and had recently installed a new accounting system.³⁴ Skylink has yet to submit the required data, but indicates that it stands ready to provide it if the Commission grants its requested waiver.³⁵ Skylink maintains that, absent grant of a waiver, it will lose \$15,000 – roughly nine percent of its annual revenue.³⁶ Skylink argues that the loss of such support would disrupt the company's operations, and would be a penalty disproportionate to its offense.³⁷ To ensure that future line counts are submitted on a timely basis, Skylink indicates that it has offered additional training to its accounting employees and revised its internal filing procedures.³⁸

III. DISCUSSION

12. We find that the petitioners have failed to demonstrate that there is good cause to waive the applicable sections of the Commission's rules.³⁹ Because USAC processes such a large amount of data each year, it is necessary that carriers meet the requisite filing deadlines, absent special circumstances.⁴⁰ Carriers are responsible for reviewing and understanding the Commission's rules to ensure that

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count filing deadlines for IAS. We will treat FiberNet's petition as a request for waiver of section 54.802(a) of the Commission's rules.

³⁰ FiberNet Petition at 2.

³¹ *Id.*

³² *Id.* at 2-5.

³³ Skylink Petition at 1-2; 47 C.F.R. §§ 54.307(c)(3), 54.802(a). Although Skylink refers to the "December 31, 2008" deadline throughout its petition, its line count filing was in fact due on December 30, 2008. See 47 C.F.R. §§ 54.307(c)(3), 54.802(a).

³⁴ Skylink Petition at 2.

³⁵ *Id.* at 3.

³⁶ *Id.* at 5.

³⁷ *Id.* at 5-6.

³⁸ *Id.* at 4, 6-8.

³⁹ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular*, 897 F.2d at 1166. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

⁴⁰ *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004) (*FiberNet Order*).

submissions are filed in a timely manner.⁴¹ The petitioners did not cure their failure to meet the filing deadlines by promptly filing the required information, nor did the petitioners provide evidence of any extenuating circumstances sufficient to demonstrate the good cause required for us to grant a rule waiver.⁴²

13. We also disagree with H&B's argument that denial of IAS for an entire year would undermine the Commission's goal of competitive neutrality. In the *Grande Order*, cited by H&B, the Commission waived rules that placed a newly-designated ETC at a disadvantage because the ETC was not designated in time to make the certification and line count data filings required to receive high-cost universal service support.⁴³ H&B, however, was not disadvantaged by the IAS rules. Moreover, we note that in the *ETC Designation Order*, the Commission adopted a quarterly IAS certification schedule to accommodate late filings, whereby a late-filing carrier's IAS is curtailed by a quarter's worth of support for each quarter that the certification is untimely. H&B could have filed its certification in subsequent quarters and received curtailed IAS support.⁴⁴

14. We remind carriers that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings. Carriers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and e-mail. For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via e-mail at hcfilings@HCLI.universalservice.org. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage carriers to use any and all methods they deem necessary to ensure that their filings are timely received.

⁴¹ *Id.*

⁴² Compare *Grande Order* (waiver granted under special circumstances when carrier did not receive ETC designation until after filing deadline, and the Commission subsequently revised rules to allow new ETCs to file 60 days after ETC designation); *US Cellular Order* (waiver granted when, due to change in rules, it was reasonable for carrier to believe line-count filings were not mandatory); *Northwest Dakota Order*, 21 FCC Rcd at 9182, para 7 (the Commission generally does not grant waivers based on the failure of third-parties; however, waiver granted when filing arrived only one day late); *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 560 (Wireline Comp. Bur. 2007) (waiver granted when line count data was received one business day after the filing deadline); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10149 (Wireline Comp. Bur. 2006) (waiver granted when deadline was missed by two business days); *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket 96-45, Order, 20 FCC Rcd 16761 (Wireline Comp. Bur. 2005) (waiver granted when deadline was missed by two business days), with *Cedar Valley Communications, Inc. Petition for Waiver of 47 C.F.R. §§ 54.307(d), 54.314(a), and 54.904(d)*, CC Docket 96-45, Order, 23 FCC Rcd 114 (Wireline Comp. Bur. 2008) (waiver denied because the filing deadline was missed by more than five months); *South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket 96-45, Order, 19 FCC Rcd 17493 (Wireline Comp. Bur. 2004) (waiver denied because the data was filed more than a month late); *NPI-Omnipoint Wireless, LLC Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules*; *SouthEast Telephone, Inc. Petition of Waiver of Deadlines in 47 C.F.R. § 54.809(c)*; *SEI Data, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a)* CC Docket 96-45, Order, 22 FCC Rcd 4946 (Wireline Comp. Bur. 2007) (NPI's waiver denied because the data was filed six months late, SouthEast's waiver denied because the data was filed two months late; SEI's waiver denied because the data was filed three months late).

⁴³ *Grande Order*, 19 FCC Rcd at 15583. The Commission amended its rules in 2005 to enable a newly-designated ETC to receive support if the required filings were made within 60 days of the date of its designation as an ETC. *ETC Designation Order*, 20 FCC Rcd at 6413, para. 92.

⁴⁴ *ETC Designation Order*, 20 FCC Rcd at 6413-14, para. 94; 47 C.F.R. §54.809(c).

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by Nebraska Technology & Telecommunications, Inc., IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by Dixie-Net Communications, Inc., IS DENIED.

17. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the petition for waiver of sections 54.307(c)(3) and 54.802(a) of the Commission's rules, 47 C.F.R. §§ 54.307(c)(3), 54.802(a), filed by The Community Cable Television Agency of O'Brien County d/b/a The Community Agency and TCA, IS DENIED.

18. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the petition for waiver of section 54.809(c) of the Commission's rules, 47 C.F.R. § 54.809(c), filed by H&B Cable Service, Inc., IS DENIED.

19. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by FiberNet, LLC, IS DENIED.

20. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the petition for waiver of sections 54.307(c) and 54.802(a) of the Commission's rules, 47 C.F.R. §§ 54.307(c), 54.802(a), filed by Skylink, L.C., IS DENIED.

21. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau